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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,993	03/08/2001	Jeffrey P. Kubala	POU920000201US1	5841

7590 10/20/2003  
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EXAMINER

SIDDIQI, MOHAMMAD A

ART UNIT	PAPER NUMBER
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2126

DATE MAILED: 10/20/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/801,993

Applicant(s)

KUBALA ET AL.

Examiner

Mohammad A Siddiqi

Art Unit

2126

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1- 43 are presented for examination.

***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-4, 9, 15-18,23, 29-32 , 37and 43, are rejected under 35 U.S.C. 102(e) as being anticipated by Kauffman et al. (6332180) (hereinafter Kauffman).

5. As per claims 1, 15,29, and 43, Kauffman discloses a method in a computing system having a first partition including a first operating system

(figure 2, element 208 and 210, col 7, lines 33-41) and a second partition including a second operating system (figure 2, element 208 and 210, col 7, lines 33-41), the method comprising the steps of:

- a) conveying first partition throughput information from said first partition to a partition manager (col 4, lines 50-52 and col 7, lines 14-18);

- b) creating in said partition manager (figure 2, element 212 and 217, col 4, lines 50-52), resource balancing directives from said throughput information (col 7, lines 14-18);

- c) allocating resources to said first partition by the partition manager (col 4, lines 50-52) according to the resource balancing directives (col 7, lines 10-28).

6. As per claims 2,16, and 30, Kauffman discloses the partition manager (col 4, lines 50-52 and col 7, lines 14-18) comprises a workload manager running in said second partition (col 8, lines 45-55) and a hypervisor (col 2, lines 38-40).

7. As per claims 3,17, and 31, Kauffman discloses the communication between partitions includes inter-partition (col 4, lines 62-63) memory sharing (col 4, lines 65-67).

8. As per claims 4, 18, and 32, Kauffman discloses the communication between partitions includes single operation message passing (col 4, lines 65-67, and col 5, lines 1-3).

9. As per claims 9, 23, and 37, Kauffman discloses the network packets are related to first partition (col 34, lines 11-16).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

11. Claims 5-8, 10-14, 19-22, 24-28, 33-36, and 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kauffman et al. (6332180) (herein after Kauffman) in view of Mayer et al. (6233242) (hereinafter Mayer).

12. As per claims 5, 19, and 33, Kauffman fails to expressly teach the information about throughput is obtained by a packet activity counter. However, Mayer discloses the information about throughput (col 8, lines 19-21) is obtained by a packet activity counter (col 53, lines 50-58). Therefore

it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to serve network traffic from the network. If one operating system fails or goes offline, main server automatically detects the problem and redirects the network traffic to remaining operating system.

13. As per claims 6, 20, and 34, Kauffman fails to expressly teach the information about throughput is obtained by counting network packets related to a partition. However, Mayer discloses the information about throughput (col 8, lines 19-21) is obtained by counting network packets related to a partition (col 53, lines 50-58, each partition is executing its own copy of operating system). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to serve network traffic from the network. If one operating system fails or goes offline, main server automatically detects the problem and redirects the network traffic to remaining operating system.

14. As per claims 7, 21, 35, Kauffman fails to expressly teach the packets received by a partition are counted. However, Mayer the packets received by

a partition are counted (col 53, lines 50-58). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to serve network traffic from the network. If one operating system fails or goes offline, main server automatically detects the problem and redirects the network traffic to remaining operating system.

15. As per claims 8, 22, and 36, Kauffman fails to expressly teach the packets sent by a partition are counted. However, Mayer discloses the packets sent by a partition are counted (col 53, lines 50-58). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to serve network traffic from the network. If one operating system fails or goes offline, main server automatically detects the problem and redirects the network traffic to remaining operating system.

16. As per claims 10, 24, and 38, Kauffman fails to expressly teach the information about throughput is obtained by relating network traffic to a processor utilization over a period of time. However, Mayer discloses the

information about throughput (col 8, lines 19-21) is obtained by relating network traffic to a processor utilization over a period of time (col 97 and col 98). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to examine network traffic to and from the server at the packet-level.

17. As per claims 11, 25, and 39, Kauffman fails to expressly teach the network traffic is obtained by counting network packets related to a partition. However, Mayer discloses the network traffic is obtained by counting network packets related to a partition (col 53, lines 50-58).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to serve network traffic from the network. If one operating system fails or goes offline, main server automatically detects the problem and redirects the network traffic to remaining operating system.

18. As per claims 12, 26, and 40, Kauffman fails to expressly teach the processor utilization is obtained from a system activity counter. However,



Mayer discloses the processor utilization is obtained from a system activity counter (col 97,98). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to examine network traffic to and from the server at the packet-level.

19. As per claims 13, 27, and 41, Kauffman fails to expressly teach the processor utilization is a system activity counter. However, Mayer discloses the processor utilization is a system activity counter (col 97,98). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server, called cluster, so they can work together to examine network traffic to and from the server at the packet-level.

20. As per claims 14, 28, and 42, Kauffman fails to disclose a network traffic to a processor utilization is a ratio of number of packets over time. However, Mayer discloses disclose a network traffic to a processor utilization is a ratio of number of packets over time (col 97 and col 98). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use two or more operating system into a single virtual server,

called cluster, so they can work together to examine network traffic to and from the server at the packet-level.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- U.S. Patent 6510496 to Tarui et al.
- U.S. Patent 6075938 to Bugnion et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammad A Siddiqi whose telephone number is (703) 305-0353. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A Follansbee can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

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Art Unit: 2126

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MAS

A handwritten signature in black ink, appearing to read 'JF', is positioned to the left of the official stamp.

JOHN FOLLANSBEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100